

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**BMF GROUP, LLC D/B/A
BMF INDUSTRIES,**

Plaintiff

V.

**ENERGY VAULT, INC. AND CROSS
TRAILS ENERGY STORAGE
PROJECT, LLC,**

Defendants

[illegible]

CASE NO. 5:23-cv-00215

DEFENDANT ENERGY VAULT, INC.’S NOTICE OF REMOVAL – DIVERSITY JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to 28 U.S.C. § 1446, Defendant Energy Vault, Inc. (“Energy Vault”) file this Notice of Removal, removing the civil action captioned *BMF Group, LLC d/b/a BMF Industries v. Energy Vault, Inc. and Cross Trails Energy Storage Project, LLC*, Cause No. 23-208-DCCV-27641, from the 132nd Judicial District Court of Scurry County, Texas (the “State Court Action”) to the United States District Court for the Northern District of Texas, Lubbock Division. This matter is being removed to the U.S. District Court for the Northern District of Texas, Lubbock Division, because this Court is the court for the district and division embracing the place where such action is pending—Scurry County, Texas. 28 U.S.C. § 124(a)(7).

Energy Vault files this notice pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1. The United States District Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332 due to the diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. Exhibit A

to this Notice contains the index of documents as required by Local Rule 81.1 and the documents are attached to the exhibit. As grounds for removal of this action, Energy Vault states as follows:

I. STATEMENT OF THE CASE

1. Plaintiff BMF Group, LLC d/b/a BMF Industries (“BMF”) initiated the State Court Action on August 17, 2023, by filing an Original Petition in the 132nd Judicial District Court of Scurry County, Texas.

2. On that same day, counsel for BMF emailed the Original Petition to counsel for Energy Vault as well as to Energy Vault’s General Counsel.

3. Energy Vault was served with process on August 25, 2023, through its Registered Agent, CT Corporation.

4. BMF asserts five (5) causes of action against Energy Vault as well as Defendant Cross Trails Energy Storage Project, LLC (“Cross Trails”) for foreclosure of mechanic’s lien claims, breach of contract, quantum meruit, promissory estoppel, including a claim for attorneys’ fees along with damages. Exhibit A-1, Pet. at ¶¶ 5.1-5.6.

II. GROUNDS FOR REMOVAL—DIVERSITY JURISDICTION

A. Diversity of Citizenship Exists Between the Parties.

5. The diversity statute, 28 U.S.C. §1332, requires “complete diversity” of citizenship, meaning that “a district court cannot exercise diversity jurisdiction if one of the plaintiffs shares the same state citizenship as one of the defendants.” *Whalen v. Carter*, 954 F.2d 1087, 1094 (5th Cir. 1992). A corporation is a citizen of the state in which it is incorporated and the state in which it has its principal place of business. *See* 28 U.S.C. ¶ 1332(c)(1). The citizenship of a limited liability company is determined by the citizenship of each member of the entity, not by the state where the entity was organized. *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (“All federal appellate courts

that have addressed the issue have reached the same conclusion: like limited partnerships and other unincorporated associations or entities, the citizenship of an LLC is determined by the citizenship of all of its members.”). “A party seeking to establish diversity jurisdiction must specifically allege the citizenship of every member of every LLC or partnership involved in a litigation.” *Settlement Funding, L.L.C. v. Rapid Settlements, Ltd.*, 851 F.3d 530, 536 (5th Cir. 2017). If the members are themselves partnerships, LLCs, or corporations, their citizenship must be alleged in accordance with the rules of that entity, and the citizenship must be traced through however many layers of members or partners there may be. *Muslow Land & Timber, Inc v. Chesapeake Exploration Ltd. P’ship*, No. 09-cv-0211, 2009 WL 367729, *2 (W.D. La. Feb. 11, 2009).

6. Based on the information contained within the Petition, Plaintiff BMF is a Texas limited liability company with its principal place of business in Texas. Exhibit A-1, Pet. at ¶ 3. Upon information and belief, all of BMF’s members were citizens of the State of Texas at the time the State Court Action was filed and remain so at the time of filing this Notice of Removal. Therefore, BMF is a citizen of Texas for purposes of diversity.

7. Defendant Energy Vault is a Delaware corporation with its principal place of business in California. Therefore, Energy Vault is a citizen of Delaware and California for purposes of diversity. 28 U.S.C. §1332(c)(1).

8. Defendant Cross Trails is a Delaware limited liability company. Cross Trails’ sole member is Enel Kansas, LLC, whose sole member is Enel Green Power North America, Inc., which is a citizen of Delaware (its state of incorporation) and Massachusetts (its principal place of business). Therefore, Cross Trails is a citizen of Delaware and Massachusetts for purposes of diversity. *Id.*; *P2ES Holdings, LLC v. Trinity Petroleum Management, LLC*, 2023 WL 1967949, at *3 (S.D. Tex. Feb. 13, 2023) (citizenship of an LLC must be traced through its members until arriving at an entity that is

either a corporation or an individual) (citing *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397-98 (5th Cir. 2009)).

9. Plaintiff BMF is a citizen of Texas, Defendant Energy Vault is a citizen of Delaware and California, and Defendant Cross Trails is a citizen of Delaware and Massachusetts. The parties are, therefore, of completely diverse citizenship. *See* 28 U.S.C. §§ 1332(a), 1332(c)(1), 1441(b).

B. The Amount in Controversy exceeds \$75,000.00, Exclusive of Interest and Costs.

10. The Petition alleges that BMF “affirmatively pleads that it seeks monetary [sic in original] over \$1,000,000.” Exhibit A-1, Pet. at ¶ 1.1. By virtue of Plaintiff BMF’s Petition, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), satisfying the Court’s removal jurisdiction. 28 U.S. §1332(b).

C. Removal is Proper.

11. Removal of this action is therefore proper under 28 U.S.C. § 1332, which provides that “[t]he district court shall have original jurisdiction of all civil action where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between (1) citizens of different States” as it is a civil action between citizens of different states and the amount placed in controversy well exceeds the sum of \$75,000. 28 U.S.C. § 1332.

D. Removal is Timely.

12. Energy Vault’s removal complies with Section 1446(b) because the removal is timely. The Notice of Removal is filed within 30 days of Energy Vault receiving a copy of BMF’s Petition in the State Court Action, on August 17, 2023. 28 U.S.C. § 1446(b)(1).

13. Defendant Cross Trails was served with process on August 25, 2023. Cross Trails consents to this removal and will separately be filing a written statement of its consent to removal of this case. 28 U.S.C. §1446(b)(2)(A).

III. CONCLUSION AND PRAYER

This Court has subject matter jurisdiction over this matter because the parties are completely diverse and the amount in controversy exceeds \$75,000.00. Defendant Energy Vault timely removed this action. The state court in which this action was commenced is within this Court's jurisdiction and division. Contemporaneous with the filing of this Notice of Removal, written notice of the filing of this Notice has been delivered to all parties who have appeared in this action, through their counsel of record, and a copy of this Notice has been filed with the District Court of Scurry County, Texas.

Defendant Energy Vault respectfully requests that this Court assume full jurisdiction of this cause, that court Cause No. 23-208-DCCV-27641 be removed from the 132nd Judicial District Court of Scurry County, State of Texas, to the docket of this Honorable Court, that further proceedings in the 132nd Judicial District Court of Scurry County, Texas, be stayed, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

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By: /s/ Brian R. Gaudet

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon all counsel of record via the Court's ECF system on this 13th day of September 2023.

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